**ERG STAR CHAMBER RESPONSE**

**TOP LINES**

* **The Windsor Framework involves fundamental changes to the old Protocol -**it establishes entirely new arrangements for internal UK trade, that deal with the full range of issues identified over the last two years.

* **The Stormont Brake exemplifies that -**it is a new democratic safeguard inserted at the heart of the Treaty - as Michel Barnier’s top adviser said it *“does amount to a clear veto possibility for the UK government, directive-by-directive, at the behest of a minority in the Northern Ireland Assembly.”*

* **We do not agree that the Stormont Brake will not or cannot be used**because of the EU’s ability to take ‘remedial measures’ in response:
	+ This is a democratic choice for MLAs in Northern Ireland and the UK Government to take.
	+ Importantly, remedial measures cannot apply between GB-NI, they can only apply between NI and the EU.
	+ In any event, remedial measures would need to be proportionate to the rule that was rejected, they could not be blanket in nature - this is a normal trade-off in any trade relationship.
	+ In contrast the Northern Ireland Protocol Bill would have given the EU the ability*levy tariffs on all trade*
	+ The Windsor Framework and Stormont Brake provide far better legal protection*against*EU remedial measures.

* **The report provides no explanation as to why it would be better to reject the Stormont Brake and preserve automatic alignment with EU goods rules:**
	+ The alternative to the Brake is no form of safeguard against rules which cause significant impact to everyday lives
	+ That is why we have been clear that the Brake is a critical new safeguard that puts power back in the hands of elected representatives in NI.

* **It is not correct to say there is no exit mechanism from existing EU goods rules:**
	+ The Northern Ireland Assembly can vote these down next year if they wish to do so - that power is preserved in the Windsor Framework.

**PRINCIPAL FINDINGS**

**“EU law will still be supreme in Northern Ireland”**

* The deal removes swathes of EU law, with laws made by UK legislatures and overseen by UK courts in their place.
* We have recognised that some EU rules remain in place - the bare minimum needed to avoid a hard border.
* Those rules are already subject to the consent mechanism in 2024.
* And for amended or replaced rules we have a powerful new veto provided by the Stormont Brake, and the UK Government’s accompanying commitments to the Assembly that will bind its hands on how and when the veto itself is used.

**“The rights of Northern Ireland’s people under the 1800 Act of Union are not restored”**

* The Acts of Union do not need restoring, because they have been upheld.
* The Government’s published legal opinion has addressed this point.

**“The ‘green lane’ is not really a ‘green lane’ at all”**

* We entirely disagree. The green lane ensures the smooth flow of internal UK trade by removing unnecessary bureaucracy, checks and prohibitions that had otherwise disrupted trade over the last two years.
* Our green lane will mean goods can move on the basis of ordinary commercial information, rather than international customs processes.
* And it will mean agrifood retail goods meeting UK food and drink safety standards, not EU standards, can be on the shelves in NI - supporting those supplies now and into the future.
* That is in addition to the permanent guarantee we have provided of unfettered access to the whole UK market for NI firms - alongside full access to the EU market.

**“The Stormont Brake is practically useless”**

* The Brake covers all of the rules that it needs to - the goods rules that could otherwise create issues for Northern Ireland.
* The report is factually wrong to assert that the EU needs to sign off on use of the Brake against the reasonable thresholds for its use. That assessment is solely for the sovereign UK Government.
* And the report is wrong to assess that the EU’s limited ability to take remedial measures will dissuade the UK Government from pulling the Brake.
	+ - Importantly, remedial measures cannot apply between GB-NI, they can only apply between NI and the EU.
		- In any event, remedial measures would need to be proportionate to the rule that was rejected, they could not be blanket in nature - this is a normal trade-off in any trade relationship.
		- In contrast the Northern Ireland Protocol Bill would have given the EU the ability to*levy tariffs on all trade*
		- The Windsor Framework and Stormont Brake provide far better legal protection*against*EU remedial measures.
* The Government has laid an SI in Parliament that confirms how it will conform to the wishes of NI’s elected representatives in its handling of the Brake.

**“The Framework itself has no exit, other than through a highly complex legal process”**

* The Article 18 consent mechanism resolves this issue. Indeed it is *strengthened* by the Windsor Framework, with both parties recognising *[through an exchange of Unilateral Declarations]* that if there is no cross-community support to maintain the existing arrangements, the Joint Committee shall meet to discuss an alternative way forward.
* But, even prior to this strengthening, the consent mechanism was broadly welcomed as a key solution to this concern when the original Protocol was negotiated and signed:

[***Lord Frost KICE interview***](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fukandeu.ac.uk%2Fbrexit-witness-archive%2Fdavid-frost%2F&data=05%7C01%7CRYorke%40no10.gov.uk%7C816a5be8a8194a3628a908db2a5472ed%7C29c8cbb9d9af4c7eb28b470f15275e47%7C1%7C0%7C638150314538330153%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=xQAF8luqw1Gz%2FCUBT6QXQPUmygCnPlwvq5SwhDqkmC4%3D&reserved=0)***, 24 June 2021***

*“I suppose the last thing I would say is that we foresaw some of these problems. We foresaw that this is a very unusual piece of treaty-making, and that is why we built in the consent arrangements. We could see that some of this was only going to be sustainable with the explicit consent of Northern Ireland’s political representatives, and that ended up being a vote in four years’ time.*

*“This sense that we have done something unusual here to deal with a special circumstance, but it had to be underpinned by a consent arrangement, is very important to the whole thing. The whole protocol can only really operate well if both communities in Northern Ireland have bought into it, and, clearly, at the moment they haven’t both done so.”*

[***Boris Johnson statement to the House***](https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fhansard.parliament.uk%2Fcommons%2F2019-10-19%2Fdebates%2F8C3F5267-8186-4536-83EC-56E3C88DCC8E%2FPrimeMinister%25E2%2580%2599SStatement%23contribution-78A28BE0-29C8-40F9-BBE1-22145A97D503&data=05%7C01%7CRYorke%40no10.gov.uk%7C816a5be8a8194a3628a908db2a5472ed%7C29c8cbb9d9af4c7eb28b470f15275e47%7C1%7C0%7C638150314538330153%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=lVYHbDqNHQ5QxrdwyDoC7yZmE7%2FkQEi0iaVxy1k78hQ%3D&reserved=0)***, 19 October 2019***

*In so far as there may be checks at a few places in Northern Ireland, physical checks would involve only 1% of the goods coming in. If that is too much of a burden, it is open to the people of Northern Ireland, by a majority, to decide that they no longer wish to participate in those arrangements. It is being done by consent. It is a very, very ingenious scheme that gets Northern Ireland out of the customs union and allows the whole UK to do free trade together, with minimum bureaucracy.”*

**KEY CLAIMS**

**“Northern Ireland remains subject to the power and control of EU law, the Court of Justice of the European Union and EU administrative organs.”**

* The deal fundamentally recasts the arrangements agreed under the old Protocol in 2019 - in the process disapplying more than 1700 pages of EU rules, and with them ECJ oversight. This will mean that goods in the green lane will meet UK food and drink safety standards; that we have the freedom to make new VAT and excise changes UK-wide; that it is UK authorities that will authorise medicines for the whole UK market; and that we can remove burdensome requirements such as customs declarations on consumer parcels.

* The only EU rules which remain are those necessary to support maximum free trade and market access for NI firms - as they wanted to see. That is less than 3% by the EU’s own calculations.

**“The deal makes only limited legal changes based on temporary legal powers”**

* The deal makes a series of fundamental changes to how the old Protocol operated - safeguarding NI’s place in the UK internal market.

* Under the old Protocol goods from GB were treated as if they were entering Northern Ireland from New Zealand. EU standards applied to all goods moved. NI was unable to make a variety of tax and spend changes. And a range of goods were either banned or had stopped moving.

* The Windsor Framework completely changes that, with a green lane for internal trade, and over 1,700 pages of EU law scrapped. We have used the powers available to change the text of the treaty itself, along with a range of other legally binding changes, in the process ending the automatic presumption of dynamic alignment; securing an expansive green lane to ensure the smooth flow of internal UK trade; and allowing a range of UK-wide VAT and excise changes to be made at Budget that were otherwise impossible.

* We have critically used those powers to address the democratic deficit and provided a clear democratic safeguard through the Stormont Brake. This goes further than the July 2021 Command Paper and the Bill, ends the ratchet of the automatic presumption of dynamic alignment, and puts the arrangements in NI under a new framework of democratic control. So we absolutely do not recognise this description.

**“The requirement to follow changes to EU law is unamended, subject only to the use of the Brake”**

* That is an absolutely central change to how EU rules apply under the Windsor Framework.

* The requirement to follow changes to EU law is already subject to the consent vote in 2024, which leaves the question of whether there should be any EU rules applied in the hands of the Assembly.

* But we have added to that a Stormont Brake, giving the UK a sovereign veto on the application of amended or replaced EU rules, with real power put in the hands of elected representatives in NI. This addresses the democratic deficit we had consistently set out with the old Protocol.

**“The rights of the people of Northern Ireland under the Acts of Union 1800 are not restored”**

* The Windsor Framework ensures that Northern Ireland’s place in the United Kingdom is fully respected, as expressed through the Acts of Union and the Belfast (Good Friday) Agreement in their modern contexts.

* And as we have set out, we are committed to enshrining in domestic law the democratic and constitutional protections set out in this agreement, reflecting Northern Ireland’s integral place in the United Kingdom and the full restoration of Northern Ireland’s place in our internal market.

* That process has begun with the statutory instrument we have laid to enshrine the powerful role for elected representatives in NI with the Stormont Brake.

**“The hard border remains between two different legal systems in Great Britain and Northern Ireland”**

* The Windsor Framework deals with the issues there had been East-West under the old Protocol. It explicitly protects internal UK trade and applies UK standards on that trade, whether on medicines, agrifood retail goods or on the duty paid on alcohol.

* In fact it is inherent in this new way forward the prospect of significant and increasing divergence between the two distinct economies on the island of Ireland - from food and drink to plants and pets, building on the existing differences in every area of economic and political life such as services, migration, currency and taxation.

* That is why we have recognised the need for more North-South market surveillance, which we have been clear we will manage sensitively.

**“The limited easings from the hard border will only apply to businesses in GB selling goods into NI, but will not benefit businesses in Northern Ireland.”**

* The minimal number of EU laws that remain – less than 3% – are to ensure that we avoid a border on the Island of Ireland and provide access to the EU single market for NI businesses – something businesses have specifically asked us to protect.
* In the areas of food and drink safety, it will be laws passed in the UK that will determine the rules that apply for the critical flows of trade from Great Britain that is the predominant source of grocery retail supplies. The regime we’ve secured for medicines also means that the medicines placed on the NI market are those that are licensed by UK authorities for use across the UK.
* Elsewhere for manufactured goods, a quarter of firms in NI are making things under entirely UK rules because there are no "EU rules" in those areas. That covers things like homeware, furniture and clothing. Beyond those areas, goods in fact meet international standards, reflecting the commitments made in the TCA. Of the 3,500 international standards, the UK and EU differ on only 11 of them - and the UK standards are higher in those cases. Nowhere is that clearer than the reliance in NI on second-hand car movements from GB - a flow that is protected under the Framework, including through continued access to UK VAT discounts.
* And as any of those rules change, they will do so only under the new framework of democratic control that the Stormont Brake provides. This reflects the pragmatic form of dual-regulation we have delivered - protecting East-West trade, while supporting maximum free trade and market access for NI firms.

**“The UK affirms and embeds the status and structures of the Withdrawal Agreement through the Framework”**

* The deal secures a durable and sustainable basis to operate the Windsor Framework in a way that works for people and businesses in Northern Ireland. That is the stability and certainty that businesses, citizens and others were clear that they wanted to see.

* As we have made clear, this is the right deal for Northern Ireland - ensuring the smooth flow of internal UK trade, safeguarding NI’s place in the Union and addressing the democratic deficit. We want that to be on a secure basis.

**“The Government commits to new, tougher arrangements for market surveillance and enforcement”**

* We recognise the prospect of significant and growing divergence on the island of Ireland, with products in NI meeting UK standards, and VAT and excise changes applying in NI beyond what is possible in Ireland.

* That is why we set out in the Framework that we are committed to enhanced market surveillance across the international land border with Ireland.

* This is about supporting the more likely reality that NI, along with the rest of the UK, will diverge from EU rules in key areas.

**“New commitments are made by the UK on “exports” from Northern Ireland to Great Britain.”**

* The UK has secured a permanent guarantee of unfettered access for NI to the whole UK market, removing any prospect of export declarations or equivalent information.

* Otherwise the UK will continue to apply controls to a very narrow set of goods to meet shared international obligations, and to share existing information to support those goals.

* That will have no effect whatsoever on our unswerving commitment, which we will further enshrine in law, to unfettered access.

**“The Government commits to stopping the progress of the Northern Ireland Protocol Bill.”**

* As we set out at the time of the deal, there is no credible legal basis to pursue the Bill, nor do we need to.

* We have a durable deal that addresses the full range of concerns with the old Protocol.

**“The EU sets out how EU representatives will engage directly with Northern Ireland "stakeholders", undermining the status of Northern Ireland within the United Kingdom.”**

* The constitutional status of Northern Ireland within the United Kingdom is completely safeguarded. And we will underpin this new framework through amendments to the Northern Ireland Act 1998 to provide constitutional and democratic guarantees for the people of Northern Ireland.

* That the EU may wish to engage with stakeholders in Northern Ireland has no effect whatsoever on NI’s place within our Union, consistent with the Belfast (Good Friday) Agreement and the principle of consent.

**“Commitments are made by the UK immediately to enhance enforcement over parcels moving between Great Britain and Northern Ireland, prior to the Windsor arrangements coming into force.”**

* The deal contains a commitment that we will continue to tackle abuse and fraud for parcel movements, as we already do. This simply means we will continue to target criminal activity and other forms of abuse, using the same risk-based and intelligence-led approach as we do for all movements into NI.

**“Claims that the Windsor Framework will lead to EU laws being “disapplied” or “removed” from Northern Ireland are not correct”**

* All of the rules we have disapplied are set out in the legal texts published on 27 February.

* And we have erred on the side of caution in terms of how we’ve sought to calculate the effect of these changes.

* But it is not as simple as one list - some of the rules are disapplied for the green lane to support internal UK trade, and some apply in full in the red lane.

* However it is clear from the texts that there are swathes of areas where EU rules do not apply to internal UK trade, safeguarding NI’s place in our Union, whether it is:
	+ UK food and drink safety rules applying for agrifood retail trade
	+ UK-wide licensing of medicines by UK authorities
	+ Allowing plants to move on the basis of the UK-wide plant passport scheme
	+ Removing burdensome customs bureaucracy - including removing all declarations
	+ for all consumer parcel movements.
	+ Enabling zero-rates on VAT for heat pumps and solar panels, and delivering our
	+ alcohol duty changes across the whole UK
	+ And protecting full unfettered access for NI firms to the UK market.

**“The Windsor Framework leads only to limited easings on the movement of goods”**

* As we have set out, we entirely disagree. They are significant and fundamental changes to how goods move.
	+ Goods that were banned, like seed potatoes, can move
	+ £150 per movement phytosanitary certificates are removed and replaced with £120 a year plant passports.
	+ Vet and plant health inspection checks have been removed.
	+ Instead of the prospect of hundreds of agrifood certificates there will be a single document per lorry
	+ There will be no prospect of routine physical checks on goods movements
	+ Movements of freight will be on the basis of ordinary commercial information, not complex commodity codes per movement and supplementary declarations.
	+ And UK food and drink safety standards will apply

**“They cover only certain aspects of East-West trade and still apply to processing by larger companies. And they will not be readily available to smaller traders”**

* Businesses of all sizes are eligible to join our green lane. And unlike the old Protocol, they can be based anywhere in the United Kingdom - they do not need to have a physical base in Northern Ireland.

* As for processing, we have quadrupled the turnover threshold below which companies involved in processing can move goods under the scheme which they can show stay in Northern Ireland - meaning four-fifths of manufacturing and processing companies in Northern Ireland who trade with Great Britain will automatically be in scope. And even above that threshold, they will be eligible to move goods under the scheme if those goods are for use in the animal feed, healthcare, construction and food production sectors.

**“Registration will be required by UK traders and carriers. Some elements will require businesses to be authorised, in a process managed by the UK but overseen by the EU.”**

* Both the Command Paper in 2021 and the Northern Ireland Protocol Bill, which this report appears to endorse, were premised on the idea of a trusted trader scheme to determine who could enter the green and red lane. And the process will be fully operated by UK authorities, as with all aspects of our green lane. This will be straightforward to join, just as our existing scheme has been.

***Command Paper (July 2021)****: Assurance for these arrangements would be provided by the requirement for all such traders to register in a light-touch scheme: in so doing, they would be agreeing to complete transparency of their supply chains to enforcement authorities, and to openness of their shipments to controls or checks on a risk-based and intelligence led basis.*

***NI Protocol: the UK’s solution (June 2022)****- The green lane would be reserved for those in a new, trusted trader scheme covering all goods movements. Traders will provide detailed information on their operations and supply chains to support robust audit and compliance work. Non-commercial goods, such as post and parcels, will automatically go through the green lane without the need for registration.*

**“Declarations will be needed, as well as compliance checks.”**

* There will be no checks on goods in the green lane, except where they are risk-based or intelligence-led on the basis of criminality or smuggling.

* As for the process, as we have set out businesses will only need to provide ordinary commercial information, with the Trader Support Service taking care of the rest - with all information simply used to ensure the green lane is not being abused by people moving goods into the EU.

**“Precautionary use of the red lane will be likely - and there will be no reimbursement mechanism for duties where goods end up solely in Northern Ireland”**

* Businesses will be able to use the green lane where they can show their goods are being used or sold in Northern Ireland, in line with the legal text.

* And it is completely wrong to suggest there is no reimbursement scheme - we have made clear that there will be a scheme up-and-running in the coming months as a result of the Windsor Framework.

**“It is not on a secure legal base, as it can be suspended or disapplied.”**

* These changes certainly are legally binding:
	+ The VAT changes in this deal are done through legally binding changes to the treaty itself - it is impossible to be any more binding than that.
	+ The EU has also agreed treaty change to Article 6(2), which puts it under an obligation in relation to green lane arrangements and protects against arbitrary changes to those arrangements.
	+ The Stormont Brake is in place through Treaty change with a new Article 13(3a)
	+ The new green lane arrangements on customs are clearly set out in a joint UK-EU decision.
	+ And the agrifood legal text sets out a list of more than 60 EU rules that are entirely disapplied for internal UK trade, and the new rules will be a matter for joint agreement under Article 13(4) at the Joint Committee.

* There are of course safeguards available - but those are available to both sides, and they are without prejudice to the other safeguard measures available in the Windsor Framework more broadly.

**“It does not apply where trade remedies apply”**

* The deal maintains tariff-free movements of steel into Northern Ireland, as we have set out. This will continue regardless of any EU trade remedies.

**“It incentivises the UK to continue to follow EU rules.”**

* The Windsor Framework does not include any binding commitments on the whole of the UK to align with EU rules.
* In fact the Framework scraps previous alignment commitments that had been provided in 2020 under the previous administration:
	+ *In December 2020, the Government committed on the grace periods that “during this period… the UK remains fully aligned to Union law applicable to meat products and listed in Annex 2 to the Protocol on Ireland and Northern Ireland.”*
	+ *“During the above-mentioned period of time, the UK authorities will take all necessary measures to ensure compliance with the Protocol and relevant Union law as of 1 April 2021.”*

**“Unfettered access means the UK loses its ability to decide that certain goods shall not be sold on its market”**

* We are concerned at the suggestion that anybody would want to circumscribe access for NI firms to the whole UK market.

* The UK Internal Market Act 2020 already enshrines the market access principle, allowing goods to be sold across the UK.

* For while devolution already enables rules to differ across the UK, it will remain a core principle for the Government that there must be full access for NI firms to the UK internal market.

**“The Windsor Framework makes only conditional adjustments to EU rules - meaning the ECJ oversees them, the UK has no remedies if they change in the future, and establishes a precedent of allowing the EU to make Regulations which apply only in NI.”**

* We don’t recognise this characterisation
	+ The VAT changes are done through legally binding treaty changes
	+ So too is the Stormont Brake
	+ And the EU puts itself under an obligation to maintain green lane arrangements through changes to Article 6(2)
	+ And the new green lane arrangements on goods movements are clearly set out in a joint UK-EU decision

* And where UK rules and standards are applied under the Framework (as they are for UK food and drink safety standards; VAT and excise changes; medicines regulation; or those areas where UK national rules already apply (such as for footwear or furniture)) - the ECJ has no role.

* We do not hide that the agreement contains safeguards for both sides. But these are properly available only in specific agreed circumstances, and are of course without prejudice to the broader safeguards that were already in place.

**“The UK has to provide written guarantees to the EU to operate the ‘green lane’”**

* These are guarantees that the arrangements we will operate will not pose disease and health risks to the island of Ireland, reflecting the longstanding nature of the single epidemiological area.

* It is not clear why this poses an issue for the operation of our green lane arrangements, as this is a shared goal.

**“The retail goods require to be moved from an “authorised establishment” - would not cover mail order.”**

* There is nothing which makes it unlawful for goods to be moved through mail order.

* These new arrangements are not yet in force and we have not yet set out the detailed operational arrangements. So it would be wrong to prejudge how they work in practice.

**“The Framework still requires compliance with formalities”**

* For the agrifood retail scheme, we have removed the threat of hundreds of certificates and replaced them with a single form. We have also removed the prospect of routine physical checks and will cut visual inspections by 95%.

* These are arrangements that will safeguard supermarket supplies and work for business.

**“The medicines scheme applies only to a narrow category of new medicines which are “centrally authorised”. Otherwise they will need to be to EU rules - making it impossible to change UK rules in the future”**

* Medicines will be authorised by UK authorities for the whole UK market. This will apply to all medicines.

* There is no requirement to make medicines to EU rules or for the UK to align with them. In any case, all the standards applied in this area follow international standards, where the UK has been at the forefront of designing and implementing them.

* Overall this deal provides full protection for medicine supplies across the UK now and in the future, as the Nuffield Trust, BMA and others have recognised.

**“And there are onerous conditions like “UK only” labels”**

* Medicines already are licensed only for a single country - the UK provides national rather than pan-national licences.

* So the fact that medicines will be labelled as UK-only simply reflects that - and we have provided significant time for joint work with industry to prepare for the new arrangements.

**“On VAT, only amounts to limited and specific relaxations in EU law applicable to VAT and excise in Northern Ireland”**

* What we’ve secured is substantial, legally binding changes and flexibilities that ensure Northern Ireland benefits from the same headline VAT, alcohol duty, and other indirect tax policies from the government as the rest of the UK – including full rates flexibility on goods which by their nature will be consumed in NI.

* Beer in NI pubs will pay less duty than in supermarkets, unlike in Ireland; there will be no VAT on solar panels and insulation installed in homes, unlike in Ireland; and the SMEs in NI will not need to comply with burdensome new EU tax rules, unlike in Ireland.

* Our agreement disapplies several burdensome future changes to EU law such as on VAT reporting and accounting requirements on imports, as well as the application of the EU SME directive.

* This agreement also establishes a specific, brand-new UK-EU mechanism to look at future rule changes, to make sure these benefit NI. This mechanism can make legally binding changes to maintain NI’s place in the UK VAT area into the future.

**“Article 10 will not be amended”**

* We have been clear what mechanism we have used to address the reach back of EU state aid rules.

* With the new strict conditions the Joint Declaration has provided, we have dealt with reach back concerns, and ensured the overwhelming majority of subsidies are governed by the UK’s own subsidy control framework.

**“By accepting the continuation of the NI Protocol's imposition of EU State aid law over Great Britain, the government has removed much of the benefit that the UK would otherwise have won from its faster, more flexible, more certain subsidy control regime under the Subsidy Control Act 2022 which applies in Great Britain and is in conformity with the TCA”**

* We have further constrained the limited circumstances in which Article 10 of the Framework applies.

* And even for those cases where it does apply, in practice there will remain a host of exemptions which allow aid to be granted without any need for notification or approval - covering more than 98% of Northern Ireland subsidies in practice based on past trends.SCA (2022) will now apply in overwhelming majority (98%) of cases.

* That is before the EU’s recent further relaxation of its rules in this area, meaning that there is even less prospect of this posing any real-world concern.

* In addition, NI continues to retain the important flexibilities available to traders in Northern Ireland - including uniquely generous agricultural subsidy arrangements where Northern Ireland is fully outside the Common Agricultural Policy, with the Northern Ireland Executive empowered to design schemes that work best for Northern Ireland subject only to basic underlying World Trade Organisation rules

**“The 'brake' is of very narrow application in theory and is likely to be useless in practice.”**

* The Brake covers all of the rules that it needs to - the goods rules that could otherwise create issues for Northern Ireland.

* The report is factually wrong to assert that the EU needs to sign off on use of the Brake against the reasonable thresholds for its use. That assessment is solely for the sovereign UK Government.

* And the report is wrong to assess that the EU’s limited ability to take remedial measures will dissuade the UK Government from pulling the Brake.
	+ Importantly, remedial measures cannot apply between GB-NI, they can only apply between NI and the EU.
	+ In any event, remedial measures would need to be proportionate to the rule that was rejected, they could not be blanket in nature - this is a normal trade-off in any trade relationship.
	+ In contrast the Northern Ireland Protocol Bill would have given the EU the ability to*levy tariffs on all trade*
	+ The Windsor Framework and Stormont Brake provide far better legal protection*against*EU remedial measures.

* The Government has laid an SI in Parliament that confirms how it will conform to the wishes of NI’s elected representatives in its handling of the Brake.

**“The Brake is a highly conditional version of a process contained in the European Economic Area (EEA) Agreement, and allows the EU to take "remedial" countermeasures”**

* This is not remotely akin to this process. This is a sovereign veto, driven by a powerful role for the Stormont institutions.

* And unlike the EEA, this applies to a very narrow subset of EU rules - the less than 3% necessary to maintain maximum free trade and market access for NI firms.

* And the report is wrong to assess that the EU’s limited ability to take remedial measures will dissuade the UK Government from pulling the Brake.
	+ Importantly, remedial measures cannot apply between GB-NI, they can only apply between NI and the EU.
	+ In any event, remedial measures would need to be proportionate to the rule that was rejected, they could not be blanket in nature - this is a normal trade-off in any trade relationship.
	+ In contrast the Northern Ireland Protocol Bill would have given the EU the ability to*levy tariffs on all trade.*

* The Windsor Framework and Stormont Brake provide far better legal protection*against*EU remedial measures.